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MINISTRY OF COMMERCE AND INDUSTRY

PUBLIC NOTICE

IMPORT TRADE CONTROL

New Delhi, the 19th August 1960

SUBJECT:—*Recognition of new Established Importers and Transfer of Quotas.*

No. 103-ITC(PN)/60.—It was indicated at the end of paragraph 86 in Section I of the Import Trade Control Policy Book for the current (April 1960—September 1960) licensing period, that the provisions relating to 'Transfer of Quotas' were being revised and a separate Public Notice would be issued in that regard. Accordingly, the revised provisions are hereby announced as detailed in the Appendix to this Public Notice.

2. In formulating the new provisions, the representations and the suggestions made by the Trade and the Trade Associations have been considered and changes made wherever practicable. An attempt has been made to liberalise the provisions and to remove hardships as far as it was possible. For the first time, a provision has been made with regard to the continuity of the quota in certain types of cases. The procedure has also been generally simplified and it will now be possible to finalise the applications expeditiously.

3. The new provisions come into force with immediate effect and will replace the existing procedure embodied in paragraphs 77—86 of Section I of the Import Trade Control Policy Book for the current (April 1960—September 1960) licensing period.

APPENDIX

Recognition of new established importers and transfer of quota,

1. An established importer may be (1) an individual, (2) a partnership firm, (3) a karta of a Hindu undivided family in respect of the family business, (4) a limited company and (5) any other association or body of individuals. An established importer cannot transfer his right to obtain licences as an established importer, and the quota granted to him for this purpose. Licences are generally granted in the name of the business belonging to the established importer. Hence where there is any change in the ownership of the business, the new owner or owners are not established importers and will not be eligible for grant of licences as established importers.

2. In public interest and for continuity of any business, however, the Chief Controller, according to the principles stated below, may recognise any person or persons as established importers in respect of any business after examining their connection with the old owners thereof. The newly recognised established importers will then be granted a quota equivalent to either the whole or a part of the old quota. Such newly recognised established importers will be eligible

for the grant of licences from the date of their said recognition only. Persons desirous of being so recognised as established importers should apply in the form given in appendix to these regulations and send the documents referred to therein and in these rules with the application in support thereof. The principles which will be applied for the purpose of the recognition and the granting of the quota are given in the following paragraphs.

3. Where the established importer was an individual and

- (i) has died, his legal heirs on application will be recognised as established importers in respect of their appropriate shares under the general law, provided it is open to any heir to relinquish his right in favour of any other heir;
- (ii) transfers his business to any other person, the transferee will be recognised as established importer on production of a registered deed executed by both the transferor and the transferee, provided the Chief Controller is satisfied that there was no intention to defeat the transferor's creditors;
- (iii) is adjudicated insolvent, the quota will lapse;
- (iv) admits a partner in the business, the entire quota will be continued to the new owners on application for recognition.

4. Where the established importer was a partnership firm, and

- (i) any partner has died, the remaining partners will be granted the entire quota of the old firm if it is so provided in the partnership agreement or if they produce evidence of relinquishment of right in their favour by the legal heirs of the deceased. Otherwise the share which the deceased possessed in the quota shall be excluded from the quota of the new owners of the business, and the legal heirs will be recognised as established importers in respect of the share of the deceased only as in paragraph 3(i) above.
- (ii) any partner has retired, the remaining partners will be granted the entire quota of the old firm;
 - (a) if it is so provided in the partnership agreement; or
 - (b) if they produce evidence of relinquishment of quota by the retiring partner in their favour; or
 - (c) if the Chief Controller is otherwise satisfied that the retiring partner according to the intention of the parties was not to have any quota on retirement;
- (iii) the business is transferred to any other person, the transferee will be recognised as established importer for the entire quota on production of a registered deed executed by both the transferor and the transferee, provided the Chief Controller is satisfied that there was no intention to defeat the transferor's creditors;
- (iv) the partnership is dissolved, the quota enjoyed by the firm will be distributed between the partners in accordance with their respective shares as provided in the agreement;
- (v) any partner is adjudicated insolvent, the entire quota will be granted to the remaining partners on application for recognition if the Chief Controller is satisfied that the insolvency has not caused in law a dissolution of the partnership. Otherwise the insolvent's share of the said entire quota will lapse, and the remaining partners will be granted a quota according to their shares only;
- (vi) a new partner is admitted in the business the entire quota will be continued to the new owners.

5. Where the established importer was a karta of a Hindu undivided family in respect of the family business, and

- (i) the karta has died or retired, the new karta will be recognised as established importer on production of a consent of the other adult members of the family;

- (ii) there is a partition in the family, any member of the family will be recognised as established importer to the extent of his share indicated in the partition agreement;
- (iii) the family business is transferred, the transferee will be recognised as established importer on production of a registered deed executed by both the transferor and the transferee provided the Chief Controller is satisfied that there was no intention to defeat the transferor's creditors.

6. Where the established importer was a limited company and

- (i) transfers its business to any other person, the transferee will be recognised as an established importer on production of a registered deed executed by the transferor and the transferee, provided the Chief Controller is satisfied that there was no intention to defeat the transferor's creditors;
- (ii) goes into liquidation, the quota will lapse; and
- (iii) is amalgamated with another limited company, the entire quota will be continued to the new company.

7. Where a quota exists in respect of a business sold by a Custodian of Evacuee Property, the purchaser on application will be recognised as an established importer in respect of the business purchased by him.

8. (i) Subject as provided in sub-paras (ii) and (iii) below, an established importer shall not transfer his business to which a quota is attached except as a whole and no person will be recognised as an established importer on the basis of a transfer in his favour of only some of the items belonging to the quota of the established importer.

(ii) If an established importer has two or more branches each having a separate quota in respect thereof, then it shall be open to such established importer to transfer the business at any one branch with the entire quota belonging to that branch.

(iii) Where an established importer has also got a manufacturing business, and any one of the items in which he has a quota as an established importer may be used for the purpose; of such manufacturing business, it shall be open to him to transfer his business as an established importer except for the items which may be used in the manufacturing business. Where such a transfer takes place the quota in the items which may be used in the manufacturing business cannot be sold or transferred to any other person.

9. (i) The transferee in paragraphs 3(ii), 4(iii), 5(iii) and 6(i) where he already holds a quota certificate in respect of the same items, shall choose a basic year for the imports to be made after his recognition under the said paragraphs and his quota after such recognition shall be determined by taking into account the imports made in that basic year both by himself and the transferor.

(ii) Where a quota is to be divided and transferred in part to several persons separately as in paragraphs 3(i), 4(i), 4(iv) and 5(ii), the persons who wish so to be recognised as established importers separately will have to choose a common basic year for calculation of their quotas for the same or similar items on the basis of the business done by the outgoing concern, as a condition precedent to their recognition.

(iii) Where the change in ownership is on account of admission of partner as in paras 3(iv) and 4(vi) or on account of amalgamation of two limited companies as in para 6(iii) then notwithstanding anything contained in paras 1 and 2 the new owners on recognition shall be considered established importers from the date of the change itself in stead of from the date of the recognition and will be eligible for licences accordingly.

(iv) The amalgamated company as referred to in para 6(iii), where both the companies which are amalgamated held quota certificates in respect of the same or similar items, shall choose a basic year for its imports after the amalgamation, and its quota after the amalgamation shall be determined by taking into account the imports made in that basic year by both the companies which are amalgamated.

10. Where an established importer changes only the name of the business which is mentioned as a licensee in the licences, he should produce an affidavit before the licensing authority concerned about the change of name and that he will not claim any licences in the future in the old name. He should also produce the income-tax clearance certificate in respect of the old as well as the new names. Where a private limited company becomes a public limited company or vice versa, it should report the fact to the licensing authority concerned. The changes referred to in this paragraph will not effect the continuity of the quota.

11. It is explained that in the following cases no change in the ownership of the business will be held to have taken place for the purposes of these regulations:

- (i) change of directors or share-holders in a public or private limited company;
- (ii) changes in an undivided Hindu family by birth, death or otherwise, except the death or retirement of the karta.

12. Where an established importer does not apply for a licence for any item pertaining to his quota for any four consecutive licensing periods during which at least one item pertaining to the said quota is licensable, his business shall be deemed to have ceased and all quotas in respect thereof shall lapse:

Provided that if the Chief Controller is satisfied that there was sufficient reason for the absence of any application as above he may grant such relief as he thinks fit.

13. Any case which is not strictly covered by any of the above paragraphs will be decided on analogous principles.

14. As the prime object of recognising a new established importer in accordance with these rules is to maintain a continuity of business, the Chief Controller, where he is satisfied that the business of any applicant for recognition is not a continuation of any previous business, shall refuse the application or pass any other proper order.

15. The above principles will apply to every change not recognised by the Chief Controller that has taken place in the ownership of any business since 1st April 1945 or the date of the establishment of the business or the date of the last change which has been recognised by the Chief Controller, whichever is the latest date. Any person applying for recognition as an established importer will have to establish the interest which he claims and furnish evidence since such latest date.

16. Where an established importer has duly made an application for a licence, but there is a change in the ownership of the business before the licence is granted, the licence will be granted in accordance with the application and for the period for which it has been made in favour of the new owners, if any such are recognised as established importers in respect of the business in accordance with these regulations; provided such new owners make their application for recognition as established importers in accordance with those regulations within one month of the date of the change in the ownership.

17. It has been stated in para 2 above that a newly recognised established importer will be eligible for grant of licences from the date of the recognition only. It shall however be open to the Chief Controller, in a case in which he is satisfied that the recognition has been or is likely to be delayed on account of circumstances beyond the control of the applicant, to grant, as a matter of grace only and not as of right, licences for any one period intervening between the date of the application for recognition and the date of the recognition.

18. Where it is found—

- (i) that the application for recognition contained any false, fraudulent or misleading information;
- (ii) that the evidence tendered by the applicant contained any document which was false or fabricated or had been tampered with;
- (iii) that the applicant is guilty of any corrupt or fraudulent practice in respect of his application;
- (iv) that any recognition or quota or any part thereof has been granted through inadvertence or mistake or due to any fraud or misrepresentation;

the Chief Controller after giving a reasonable opportunity to the persons recognised as established importers of being heard, may cancel or amend the order of recognition or the quota.

19. The following gives an indication of the evidence which should be produced in support of the application:

- Re: para 3(i).—Death certificate of the deceased; will as proved in a Court or an affidavit by the legal heirs that they are the only legal heirs; where any heirs have entered into a partnership, their partnership deed; affidavit of heirs relinquishing right.
- Re: para 3(ii).—The registered deed of transfer of business.
- Re: para 3(iv).—Partnership deed admitting the new partner.
- Re: para 4(i).—Death certificate of the deceased; partnership deed of the firm; affidavit of relinquishment of interest by the legal heirs of the deceased; will as proved in a court or an affidavit by the legal heirs that they are the only legal heirs.
- Re: para 4(ii).—The partnership deed of the firm; affidavit of relinquishment of interest by the retiring partner.
- Re: para 4(iii).—The registered deed of transfer of business.
- Re: para 4(iv).—The deed of dissolution of partnership.
- Re: para 4(v).—The partnership deed of the firm.
- Re: para (vi).—The partnership deed admitting the new partner.
- Re: para 5(i).—The death certificate of the deceased; affidavit of consent to the new karta by the other adult members of the family.
- Re: para 5(ii).—Partition deed.
- Re: para 5(iii).—The registered deed of transfer of business.
- Re: para 6(i).—The registered deed of transfer of business.
- Re: para 6(iii).—Order of Court or other evidence of amalgamation.
- Re: para 7.—The sale deed executed by the Custodian.
- Re: paras 9(i), (ii) and (iv).—Affidavit of common basic year.
- Re: para 10.—Affidavit as to the change of name only.

Every affidavit shall have been sworn before a Magistrate or an Oath Commissioner or a Notary Public or other authority competent to administer the oath.

An applicant shall also produce such other evidence as is necessary to prove the interest claimed by him or the fulfilment of any condition laid down by these regulations. The applicant shall also furnish such further evidence, if any, as is called for by the Chief Controller.

20. The following further documents should be produced by every applicant and will be taken into account in deciding whether he should be recognised as an established importer in respect of the interest claimed by him.

- (i) Extracts relating to the applicant and his predecessors in interest of the register of firms maintained under Chapter VII of the partnership Act, 1932.
- (ii) An income-tax clearance certificate of the applicant and each of his predecessors in interest from the date mentioned in paragraph 15.
- (iii) Cuttings of advertisements in two newspapers one local and the other a leading English/Hindi Daily notifying the claim made by him for recognition and the grant of a quota and calling for objections against such claim to be sent to the Chief Controller of Imports and Exports, New Delhi, within three weeks from the date of publication of the advertisement.

21. These regulations are in supersession of all rules, notices, notifications, orders issued previously on the same subject matter.

ANNEXURE

Form of application for recognition as established importer and transfer of quota on change in the ownership of business

1. Name of applicant

(a) Trade or business name.

(b) Address.

(c) Ownership, whether—

(i) individual

(ii) partnership

(iii) karta of undivided family

(iv) limited company

(v) any other association or body of individuals.

(d) Names of individuals in case of (i), (iii) and (v) above, partners in case of (ii) above and of directors in case of (iv) above.

NOTE.—In case of (ii) the partnership deed should be sent with the application.

2. (a) Trade or business name and address of the established importer whose quota is sought to be transferred either wholly or in part.

(b) Whether the established importer in (a) above was

(i) an individual

(ii) a partnership

(iii) a karta of a Hindu undivided family in respect of the family business

(iv) limited company

(v) any other association, or body of individuals.

(c) Names of the individual in case of (i), (iii) and (v) above, names of partners in case of (ii) and names of directors in case of (iv) above.

NOTE.—In case of (ii), the partnership deed should be sent with the application.

3. Date on which the business in (2) (a) above was first established.

4. The last transfer, if any, of quota allowed previously in respect of the business, and the number and date of the order allowing such transfer.

5. Mention changes in the ownership of the business due to admission, retirement or death of partners or transfer of business or any other reason whatsoever since 1945, or the date given in item (3) above or the date mentioned if any, in item (4) above, whichever is latest.

NOTE.—All documents evidencing the said changes or as required by paras 3 to 20 should be sent with the application.

6. Why was no application made for recognition of the change mentioned in (5) above?

7. Particulars of licences, if any, obtained without obtaining recognition of change (i.e., licence number, name of commodity, value of licence, licensing period and licensing authority).

8. Particulars of the quotas sought to be transferred (i.e., number, date and value of quota certificate, the name of commodity and the basic year as mentioned therein and the licensing authority).

9. Whether there is any order in force against the said established importer under clause 8 of the Import Control Order, 1955 or clause 8 of the Exports Control Order, 1958 suspending issue of licences or debarring him from receiving licences, and the number and date of the order.

10. The share which applicants claim in the quota of the established importer and any reason for the same.

11. List of documents enclosed with the application.

1. _____
2. _____
3. _____
4. _____

K. T. SATARAWALA,
Chief Controller of Imports & Exports.

